

VIA: Air
(SPECIFY AIR OR SEA POUCH)

Approved For Release 2001/08/24 : CIA-RDP59-00882R000300200

25X1A

455/171
12 Jan

SECRET

CLASSIFICATION

OGC Has Reviewed

TO : Chief, EE
Attn: General Counsel
FROM : Chief of Mission, [REDACTED]
SUBJECT: GENERAL— Administrative

DATE: 13 DEC 1954

25X1A

SPECIFIC— [REDACTED]

25X1A

1. We have just received the above regulation and the attachments thereto. Attachment 1 to that Regulation contains a sample form of declaration of trust which presents two problems in application under local law. The first problem is the lack of recognition of the fiduciary nature of a trust under local law. A declaration of trust is here treated as an agency contract between the donor and the trustee; the former empowering the latter to take and hold possession, and the latter agreeing to perform the agency. The agreement is enforceable between the parties, but the possession of the trustee creates an ostensible title in him, upon which innocent third parties may rely. A breach of the trust gives rise to no remedy against innocent third parties, but only against the agent for a failure to perform his contract. The doctrine whereby the trust follows the property has never received sanction under local law.

2. Thus it may be seen that trust agreements with other than U.S. nationals would have a minimum of legal efficacy. We have in the past insisted that such a person execute an assignment of the lease prior to taking possession. This assignment leaves the name of the assignee and the date blank and could probably be enforced by a third person filling in his name and a date at a later time, where the lease contains no restrictions upon assignment. From a practical standpoint, security reasons would probably prevent direct enforcement except as against the heirs of the lessee. The psychological effect of the instrument has thus far proven satisfactory.

3. The second difficulty with reference to local law is that a leasing contract creates no estate in the property. It is regarded under [REDACTED] law as merely a contract between the landlord and the tenant, and the tenant's right of possession is dependent solely upon the validity and continuation of the landlord's title. A mortgage foreclosure during the tenancy conveys the title to the foreclosure purchaser and gives the new landlord a right to serve notice terminating the tenancy. In some instances the new landlord

25X1A

SECRET

FORM NO. 51-28A
MAR. 1949

Approved For Release 2001/08/24 : CIA-RDP59-00882R000300200122-9

SECRET

25X1A
may be required by [REDACTED] law to make restitution to the tenant for improvements and restitution for advance rentals paid to the previous landlord. The tenant's remedy is primarily against the original landlord because the relationship is contractual and in no way creates a property interest.

25X1A
4. Although the chief difficulty, i.e., lack of local recognition of a trust, is not applicable as to U.S. nationals, the sample form declaration of trust could hardly be signed by them affirming a property interest in the premises. It is not our understanding that a person could be "seised" of a leasehold interest of realty even at common law, but rather that "seisin" was reserved to indicate an interest of freehold in the realty. Under local [REDACTED] law there could be no possibility of "seisin" and neither is there a "leasehold". We have therefore drafted attachment A as a form of declaration of trust for local usage. You will note that the only differences are in the uses of the terms "seisin" and "leasehold interest."

5. In addition to our request for permission to use attachment A in lieu of the declaration of trust attached to the reference regulation, we request Headquarters approval for the substitution of the assignment procedure instead of the use of a declaration of trust in cases where the lessee is not a U.S. citizen.

25X1A
[REDACTED]

Att.

Decl. of Tr.

13 December 1954

Distribution:

EE - 3

Gen Counsel - 1 w/ att

SECRET